IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 201 OF 2002

Detroit Industries Ltd. & Ors. ..Applicants.

V/s.

S. K. More & 2 Ors. ..Respondents.

Shri Subhash Jha for the Applicants.
Shri P.D.Sawardekar i/by M.P.Rege for Respondent No.1.
Shri S.R. Shinde, APP for the Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : JANUARY 12, 2005

PC :-

1. Heard counsel for the parties. By this Application, the Applicants -accused Nos. 1 and 2 pray for quashing the criminal action instituted by Respondent No.1 for offence punishable under sections 409 and 420 read with 34 of the I.P.C. alongwith section 42 of the State Financial Corporation Act, 1951. The concerned Magistrate upon being satisfied issued process on the complaint as filed by respondent No.1. According to the Applicants, the order issuing process cannot be sustained. It was argued that there are several litigations pending between the parties and the transaction in question is an ordinary business transaction and in such a case question of

invoking section 420 of I.P.C. does not arise. To butress this submission, reliance was placed on the decision of the apex court reported in (2001) 3 Supreme Court Cases 513, in the case of Alpic Finance Ltd., vs. P.Sadasivan & Anr. Emphasis was placed on the discussion in paragraphs 10 to 12 of the said decision of the Apex Court.

2. However, in my opinion, this decision is of no avail to the Applicants before me. In that case, the Apex Court in para 10 has found as of fact that there was no allegation made in the complaint that the accused made a wilful mis-appropriation. On the other hand, in the present case on reading paragraphs 13, 14 and 15 of the complaint as filed and the complaint as a whole, it is clear that the necessary allegations spelling out the ingredients of section 420 have been spelt out in the complaint. It is not a case of no allegation about willful misrepresentation at all. It will be useful to refer to the dictum of the Apex Court in the case of Rajesh Bajaj reported in AIR 1999 SC 1216, para 9 thereof. Viewed in that perspective, no fault can be found with the conclusion reached by the learned Magistrate, issuing the process against the applicants.

3. Shri Jha for the applicants further contends that in any case section 409 of IPC has no application. Assuming that the applicants can be justified in contending that section 409 of I.P.C. will not be attracted in the present case but on the submission canvanssed, section 406 may possibly be invoked in the fact situation of the present case. If it is so, it is always open to the trial court to alter the charges at the appropriate stage. Accordingly that cannot be a ground to quash the complaint. I see no reason to interfere. There is no substance in this application.

4. Hence dismissed.

5. It is made clear that the observations made in this order shall not influence the trial court in any manner and shall decide the matter on its own merits in accordance with law and on the basis of the evidence as adduced by the parties.

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